

will any award be made where there has not been compliance with 1., 2., and 3. above.

If the bidder cannot make the foregoing certification, the bidder shall so State and shall furnish with the proposal a signed statement which sets forth in detail the reasons why the certification cannot be made. Where 1., 2., and 3. above have not been complied with, the proposal will neither be considered for award nor will any award be made unless the Department determines that such disclosure was not made for the purpose of restricting competition.

The fact that a bidder has 1) published price lists, rates, or tariffs covering items being procured, 2) informed prospective customers of proposed or pending publication of new or revised price lists for such items, or 3) sold the same items to other customers at the same prices being bid does not constitute a disclosure within the meaning of 1. above.

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Section 103 - Award and Execution of Contract

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103.01 Consideration of Bids. After the proposals are opened and read, the Department will compare the proposals on the basis of the summation of the products of the quantities and the unit prices unless otherwise defined in the bid proposal. The results of the comparison will be available to the public upon award of the Contract. In the event of a discrepancy between unit prices and extensions, the unit price shall govern. The Department reserves the right to reject proposals, waive technicalities, proceed to do the work otherwise, or advertise for new proposals. Unit bid prices may also be affected by maximum price provisions noted elsewhere in these Specifications.

103.02 Award of Contract. The award of the Contract will be made within 30 days after the opening of the proposals to the responsible bidder who submits the lowest responsive proposal. The successful bidder will be notified in writing, mailed to the address indicated on the proposal, of the acceptance of the proposal and the award of the Contract. By mutual consent, the Department and the lowest

responsible bidder can agree to extend the time within which the Department may make an award.

103.03 Cancellation of Award. The Department reserves the right to cancel the award of any contract before execution without liability.

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103.04 Return of Proposal Security. Proposal securities, except that of the lowest bidder, will be returned upon award of the Contract, but in no event, later than 30 days after opening of the bid proposals. The retained proposal guaranty of the lowest bidder will be returned after satisfactory Contract performance and payment bond has been furnished and the Contract has been executed. A Contractor will not be released from this obligation because of an alleged error in the preparation of the proposal unless the Department retains the proposal guaranty.

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103.05 Performance and Payment Bonds. Simultaneous with the execution of the Contract, the successful bidder shall furnish a surety bond or bonds in a sum equal to 100% of the Contract price to the State. The bond shall be for the benefit of the Department, as well as for the use and benefit of the Division of Revenue of the State in the case of claims under this bond for any and all taxes due to the State. The bond shall be issued by a corporate surety authorized to do business in this State. The Contractor shall on a form provided by the Department obtain a release from the Division of Revenue indicating that all tax obligations for the Division of Revenue have been satisfied. This form shall be presented to the Department as a condition for the release of bond.

The bond shall be conditioned upon the faithful compliance and performance by the successful bidder of each and every term and condition of the Contract, at the time and in the manner prescribed by the Contract, including the payment in full to every person furnishing material or performing labor or services in the performance of the Contract, of all sums of money due the Contractor for such labor, services, or material. The bond shall also contain the successful bidder's guarantee to indemnify and save harmless the State and the Department from all costs, damages, and expenses growing out of or by reason of the successful bidder's failure to comply and perform the work and complete the Contract in accordance with the Contract.

The bond shall provide that every person furnishing materials or performing labor for the successful bidder under the Contract may maintain an action on the bond for its own use in the name of the State in any court of competent jurisdiction, for recovery of such sum or sums of money as may be due the person from the successful bidder.

The form of such bond shall be provided by the Department and the surety must be acceptable to the Department.

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103.06 Execution and Approval of Contract. The successful low bidder shall return the signed Contract and Contract bond to the Department within 20 days after the notice that the Contract has been awarded. If the Contract is not executed by the Department within 15 days following receipt of the signed Contracts and bonds, the bidder has the right to withdraw the bid without penalty. The Contract will not be considered effective until it has been fully executed by all parties to the Contract.

Prior to the execution of the Contract, provide proof of compliance with the requirements of Sections 2502 and 2503, Chapter 25, Title 30 of the Delaware Code. If the successful bidder is a non-resident corporation, provide proof of compliance with the requirements of Subchapter XIV of Title 8 of the Delaware Code, and as further amended at the time of bid.

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103.07 Failure to Execute Contract. Failure by the successful bidder to execute the Contract and file an acceptable bond within 20 days after the notice of award shall be considered a revocation of the notice of award and forfeiture of the proposal guaranty to the Department. Contract award may then be made to the next lowest responsive bidder or the work may be re-advertised.

103.08 Escrow of Bid Documentation. If required by the Special Provisions, submit to the Department legible copies of the bid documentation.

- A. **Scope and Purpose.** The purpose of escrowing the bid documentation is to preserve the Contractor's bid documents for use by the Contractor and the Department in the resolution of any disputes, claims, arbitration proceeding, or litigation arising from this Contract. The submitted bid documentation shall be placed in escrow with a banking institution and preserved by that institution as specified in the following Subsections of this Section.
- B. **Submittal and Return of Bid Documentation.** Within 24 hours of the execution of the Contract, the Contractor shall submit the bid documentation in a sealed container as per the custody Agreement form. The container shall be clearly marked "Bid Documentation" and shall show on the face of the container the Contractor's name and address, the date of submittal, the Contract number, and the Project designation.
- C. **Affidavit.** In addition to the bid documentation, submit an affidavit, signed under oath by a representative of the Contractor authorized to execute bidding proposals, listing each bid document submitted by author, date, nature, and subject matter. The affidavit shall attest that 1) the affiant has personally examined the bid documentation, 2) the affidavit lists all of the documents relied upon by the

Contractor in preparing its proposal for the Project, and 3) all such bid documentation is included in the sealed container submitted to the Department.

- D. **Duration and Use.** The Department and the Contractor will jointly deliver the sealed container and affidavit to a banking institution or other bonded document storage facility selected by the Department for placement in a safety deposit box, vault or other secure accommodation. The document depository Agreement shall reflect that the bid documentation and affidavit will remain in escrow during the life of the Contract or until the Contractor and the Department jointly agree to remove such documentation, or the Contractor notifies the Department of intention to file a claim or initiate litigation against the Department related to the Contract. Notification of the Contractor's intention to file a claim or initiation of litigation against the Department will be sufficient grounds for the Department to obtain the release and custody of the bid documentation. If the bid documentation is not removed from escrow, upon completion of the Contract and provided that the Contractor has signed the final Standard Release Form, the Department will instruct the document depository to release the sealed container to the Contractor. In accordance with the Contractor's representation that the sealed container placed in escrow contains all of the materials relied upon in preparing its proposal, the Contractor agrees to waive the right to use any bid documentation other than that placed in escrow to resolve all disputes arising out of the Contract.
- E. **Refusal or Failure to Provide Bid Documentation.** Failure to provide bid documentation will render the proposal non-responsive, and the proposal guaranty will be forfeited in accordance with [Subsection 103.07](#).
- F. **Confidentiality of Bid Documentation.** The bid documentation and affidavit in escrow are, and will remain, the property of the Contractor. The Department has no interest in, or right to, the bid documentation unless mutually agreed by the Contractor and the Department or upon notification of the intention to file claim is received or litigation ensues between the Department and Contractor. In the event of such notification or litigation, the bid documentation and affidavit shall become the property of the Department until complete resolution of the claim or litigation is achieved. These materials, and all copies made by the Department, shall be returned to the Contractor upon execution of a final release. The Department shall make every reasonable effort to ensure that the bid documentation it has gained access to will remain confidential within the Department and will not be made available to anyone outside the Department or used by a former Department employee.
- G. **Cost and Escrow Instructions.** The cost of the storage of

bid documents will be borne by the Department. The Department will provide escrow instructions to the document depository consistent with this clause.

- H. **Payment.** There will be no separate payment for the cost of compilation of data, the sealed container, or verification of the bid documentation. All costs shall be included in the Contract bid price.

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Subsection 103.09 Withdrawal of Bid. If, at any time, after the acceptance of bids by the Department and before full execution of the Contract the low bidder determines a need to withdraw their bid, they shall put the request in writing to the Department's representative stating their reason(s) for such withdrawal. The Department reserves the right to accept/reject the bidder's request to withdraw upon review of the merits. The Department reserves the right to retain the bid bond or certified check in full or in part as liquidated damages. The Department may then proceed to the next lowest responsive bidder, or reject all proposals and re-advertise for new proposals.

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Section 104 - Scope of Work

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104.01 Intent of Contract. The Contractor shall complete the work described, furnishing all labor, materials, equipment, tools, transportation, and supplies required to complete the work in accordance with the Contract.

104.02 Signs. The Contractor shall, with the Engineer, inventory all signs (i.e., Traffic, Bus Stops, Street Names, etc.) within the limits of the Contract. Necessary bus stops and traffic signs shall be maintained in operation during construction, and all other signs shall be properly stored. The Contractor is responsible for any loss or damage to signs.

104.03 Bus Stops. Bus stops shall be maintained as close as possible to the original location by use of temporary roadway